



INTERIOR BOARD OF INDIAN APPEALS

Estate of Johanna Small Rib (Standing Twenty)

19 IBIA 236 (02/20/1991)

Reconsideration denied:
20 IBIA 66



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF JOHANNA SMALL RIB (STANDING TWENTY)

IBIA 90-90

Decided February 20, 1991

Appeal from an order denying petition for rehearing issued by Administrative Law Judge Sam E. Taylor in Indian Probate IP OK 215 P 88-1.

Affirmed.

1. Indian Probate: Wills: Testamentary Capacity: Generally--Indian Probate: Wills: Undue Influence

The burden of proof as to testamentary incapacity or undue influence in Indian probate proceedings is on those contesting the will.

2. Indian Probate: Wills: Testamentary Capacity: Generally

To invalidate an Indian will for lack of testamentary capacity, the evidence must show that the decedent did not know the natural objects of her bounty, the extent of her property, or the desired distribution of that property. Further, the evidence must show that this condition existed at the time of execution of the will.

3. Indian Probate: Wills: Testamentary Capacity: Generally

Evidence that an Indian decedent has been a patient at a mental hospital or has taken medication for a mental condition is insufficient to establish that the decedent lacked the requisite testamentary capacity at the time she executed her will.

4. Indian Probate: Wills: Undue Influence

To invalidate an Indian will on the grounds of undue influence, it must be shown: (1) that the decedent was susceptible of being dominated by another; (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling her mind and actions; (3) that such a person did exert influence upon the decedent of a nature calculated to induce or coerce her to make a will contrary to her own desires; and (4) that the will is contrary to the decedent's own desires.

APPEARANCES: Ella Lumpmouth Sleeper, pro se; Ruby Lumpmouth Tiger, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Ella Lumpmouth Sleeper seeks review of a March 26, 1990, order denying rehearing issued by Administrative Law Judge Sam E. Taylor in the estate of Johanna Small Rib (Standing Twenty) (decendent). For the reasons discussed below, the Board affirms that order.

Background

Decendent, unallotted Cheyenne 801U5547, was born on April 12, 1897, and died on February 16, 1988, at El Reno, Oklahoma. By a will executed on September 14, 1979, she devised the bulk of her estate to her nieces Ruby Lumpmouth Tiger and Gladys Lumpmouth Hancock. She devised one dollar to appellant, who was decendent's half-sister.

Judge Taylor held a hearing to probate decendent's trust estate on April 18, 1989. At the hearing, appellant challenged decendent's will on the grounds that decendent was incompetent to execute a will because of mental illness and that she was subjected to undue influence. On January 16, 1990, Judge Taylor issued an order approving decendent's will, stating in part:

Some of the witnesses testified that the decendent was easily influenced, yet no specific instances thereof were given. No evidence was introduced that Ruby Lumpmouth Tiger, niece and one of the devisees named in the 1979 Will, ever influenced the decendent. Ms. Tiger was not present when the Will was drafted or executed, and there is no evidence that she knew the contents thereof until after the decendent's death.

Accordingly, I find and determine that the decendent was not unduly influenced at the time she made and executed her Last Will and Testament dated September 14, 1979.

The only evidence tending to support the allegations that the decendent lacked the requisite testamentary capacity to make and execute her Will on September 14, 1979, is that she was schizophrenic. There is no evidence that she had been committed to any hospital for such since she was last committed to the Western State Hospital, Fort Supply, Oklahoma, in 1965. She has allegedly been a resident of nursing homes in Yukon, Oklahoma, and El Reno, Oklahoma, at least since the early 1970's and apparently with proper medication had not suffered any schizophrenic attacks or seizures.

According to the testimony and notes of the scrivener of the Will of September, 14, 1979, decendent was not suffering from any schizophrenic seizure at the time she was making and executing

said Will. The decedent knew most of her heirs and the nature of her estate; she apparently had a plan in mind for the disposition of her estate and was able to disclose it to the scrivener.

Accordingly, I find and determine that the decedent had the requisite testamentary capacity to make and execute her Last Will and Testament dated September 14, 1979.

(Jan. 16, 1990, Order at 2-3).

Appellant filed a petition for rehearing on March 13, 1990. Judge Taylor denied the petition on March 26, 1990, stating:

The decedent's mental disorder (schizophrenia) was duly considered. The decedent was under medication to control same and at the time the Will was made she was not suffering a schizophrenic attack. The testimony and notes of the scrivener of decedent's Will amply show that decedent had the requisite mental capacity to make a Will and was not under any undue influence.

Appellant's notice of appeal from this order was received by the Board on May 29, 1990. During the briefing period, appellant attempted to file a statement, together with a number of documents relating to decedent's commitments to the Western State Hospital. However, she failed to serve either her statement or the attached documents on the other parties to this appeal, as required by 43 CFR 4.310(b), even after being ordered to do so by the Board. ^{1/} Accordingly, the Board informed the parties that the statement and documents would not be considered. Appellee Ruby Lumpmouth Tiger filed a statement with the Board, indicating that she had served it on the other parties.

Discussion and Conclusions

[1] Appellant has argued throughout these probate proceedings that decedent lacked testamentary capacity and was subjected to undue influence in the execution of her will. As a will contestant, appellant bears the burden of proving her allegations. See, e.g., Estate of Alice Jackson (John), 17 IBIA 162 (1989); Estate of Comer Fast Eagle, 16 IBIA 40 (1988). Judge Taylor concluded that appellant failed to carry her burden.

[2, 3] In order to invalidate an Indian will for lack of testamentary capacity, the evidence must show that, at the time the will was executed, the decedent did not know the natural objects of her bounty, the extent of her property, or the desired distribution of that property.

^{1/} 43 CFR 4.310(b) provides: "Service. Notices of appeal and pleadings shall be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board."

Estate of Comer Fast Eagle, *supra*; Estate of Virginia Enno Poitra, 16 IBIA 32 (1988), and cases cited therein. Evidence that an Indian decedent has been a patient in a mental hospital or was taking medication for a mental condition is insufficient to establish that the decedent lacked the requisite testamentary capacity. Rather, there must be a showing that the decedent's mental condition affected her competency at the time she executed her will. Estate of Ella Derand, 12 IBIA 238 (1984).

The evidence in this case shows that decedent had been blind since childhood; had been a patient in a mental hospital on several occasions, the last being in 1965; and was, at the time she executed her will, residing in a nursing home. However, both the will scrivener and a will witness testified that decedent was competent at the time she executed her will. Their testimony was fully supported by a memorandum to the file prepared by the scrivener on September 18, 1979, which records the conversation she had with decedent on the day the will was executed. ^{2/} It is apparent from the testimony of these witnesses, as confirmed by the scrivener's contemporaneous memorandum, that the decedent was familiar with the property she owned, understood her family relationships, and knew how she wanted to distribute her property.

Appellant's generalized arguments concerning decedent's mental condition cannot refute the direct evidence in the record concerning decedent's competency on the day she executed her will. ^{3/} Appellant herself testified at the hearing that decedent sometimes had full possession of her faculties, although at other times she did not (Transcript. at 4 6). The Board finds that appellant has not carried her burden of proving that decedent lacked testamentary capacity on September 14, 1979.

[4] To invalidate an Indian will on the grounds of undue influence, it must be shown: (1) that the decedent was susceptible of being dominated by another; (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling her mind and actions; (3) that such a person did exert influence upon the decedent of a nature calculated to induce or coerce her to make a will contrary to her own desires; and (4) that the will is contrary to the decedent's own desires. Estate of Alice Jackson (John), *supra*, and cases cited therein.

^{2/} The scrivener also reported in the memorandum that, before talking to decedent, she had talked to the administrator of the nursing home, who told her that decedent was alert, was "just fine unless she got upset about something," and was in the home only because she was blind. The administrator stated further that the only medication decedent was taking was for a stomach ailment.

^{3/} Even if the Board were to consider the documents appellant attempted to file with the Board, its conclusion would be the same. These documents concern decedent's hospitalizations in the Western State Hospital. The most recent of these, concerning hospitalizations in 1962 and 1965, were in the record before Judge Taylor. None of the documents are persuasive evidence that decedent lacked testamentary capacity in 1979.

Appellant has produced no evidence that decedent was unduly influenced by anyone. The Board finds that appellant has not carried her burden of proving that decedent was subjected to undue influence.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Taylor's March 26, 1990, order denying rehearing is affirmed.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge